



FAIR POLITICAL PRACTICES COMMISSION
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To: Chairman Schnur and Commissioners Garrett, Hodson, Montgomery and Rotunda
From: Roman G. Porter, Executive Director
Subject: Monthly Report on Commission Activities
Date: September 3, 2010

This memorandum is a summary of administrative activity and other matters since the report sent to you prior to the last meeting of the Commission.

A. Personnel

Hires
None

Separations

Ty Moore, Commission Counsel, Enforcement Division
Faye Portman, Legal Secretary, Enforcement Division
Leah Yadon, Technical Assistant II, Technical Assistance Division

B. Staff Projects

Technical Assistance Division

During the period of August 1 through 28, the Division answered 4,677 calls on the Commission's toll-free advice line. In an effort to provide the highest levels of customer service, TAD staff began accepting inquiries for advice via email. This service is designed to address questions requiring less intensive research, where links to the Commission's website typically provide an answer. Consultants will follow up with a phone call for more complicated questions sent via email. The majority of questions are sent during the evening or weekend, providing an opportunity for non-professional treasurers, candidates and officeholders to ask questions during times that are more convenient to them.

In August, several campaign disclosure seminars were held: Sandy Johnson conducted workshops in Los Altos Hills, Santa Monica, and Westminster; Trish Mayer conducted training sessions in Adelanto, San Diego, and San Luis Obispo; and Dixie Howard conducted a workshop in Visalia. Average attendance was 75 or more candidates and treasurers.

In trying to identify methods where the Commission can provide training seminars across the state while reducing expenses, the Division posted its first campaign disclosure seminar on YouTube. Currently, staff is posting PowerPoint presentations used during live seminars with voice-overs and will continue to identify, develop and refine solutions to ensure we continue providing high quality information to the greatest number of individuals at the lowest cost to the state.

Enforcement Division

Between the period of July 21, 2010, and August 31, 2010, the Enforcement Division opened 99 proactive investigations and received 15 sworn complaints. Nine of these sworn complaints are currently in the intake process, 4 were sent to full investigation, and 2 were closed with an advisory letter. During this time, the

Division closed a total of 143 cases with 68 cases receiving warning letters; 5 receiving advisory letters; 9 finding no violation of the Act; 37 files closing without action and 24 closing with fines assessed by the Commission.

Currently, the Enforcement Division has 511 cases in various stages of resolution, which includes the 15 cases before the Commission as listed in the September 2010 agenda.

Legal Division

From July 23 through August 17, 2010, the Legal Division received 15 requests for written advice and completed 16 advice letters (9 informal; 6 formal; and 1 withdrawn). From July 23 through August 17, 2010, the division received 14 public records act (CPRA) requests and completed 10 requests for records.

C. Conflict-of-Interest Code: Adoption, Amendments and Exemptions

Pursuant to Section 87300 of the Government Code and Commission Regulation 18750.1, state and multi-county agencies seeking to adopt or substantively amend a conflict-of-interest code must submit the proposed code to the Commission for review and approval. The Technical Assistance Division has reviewed and, since the last agenda, I have approved the following conflict-of-interest code amendments:

Conflict-of-Interest Code: Adoptions, Amendments and Exemptions

Pursuant to Section 87300 of the Government Code and Commission Regulation 18750.1, state and multi-county agencies seeking to adopt or substantively amend a conflict-of-interest code must submit the proposed code to the Commission for review and approval. The Technical Assistance Division has reviewed and, since the last agenda, I have approved the following conflict-of-interest code amendments, adoptions and one exemption:

Code Adoption:

Empire Health Plan Health Access JPA
Antelope Valley Learning Academy
Pacific Library Partnership
California Electronic Recording Transaction Authority
Lower San Joaquin Levee District

Code Amendments:

Bay Area Air Quality Management District
Board of Pilot Commissioners
Business, Transportation & Housing Agency
CA Earthquake Authority
CA Uniform Construction Cost Accounting Commission
Department of Developmental Services
Department of Fair Employment and Housing
Department of Pesticide Regulation
Galt Joint Union High School District
Horizon Charter School
Kingsburg Cemetery District
Sierra Nevada Conservancy
State Coastal Conservancy
West Valley Mission Community College District

Code Exemptions:

CA Actuarial Advisory Panel

D. Audit Reports

Pursuant to Sections 90001, 90004 and 90006 of the Government Code, the Commission periodically conducts audits and prepares audit reports. Since my last report, the following audits have been completed:

- 1) **Henry Raymond Haynes** and his controlled committee **Taxpayers for Haynes**. Mr. Haynes was a candidate for the Board of Equalization in the 2006 General Election.
- 2) **Kurato Shimada** and his controlled committee **Kurato Shimada for PERS Board 2009**. Mr. Shimada was re-elected to the CalPERS Board of Administration in the 2009 Member-at - Large Election.

E. Finding of Probable Cause

Pursuant to Regulation 18361, I have found sufficient evidence in the following cases to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that the following respondents committed or caused a violation of the Political Reform Act. **A finding of probable cause does not constitute a finding that a violation has actually occurred. Respondents are presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding.**

- 1) **In the Matter of Michelle Berman, FPPC No. 10/115.** On August 11, 2010, probable cause was found to believe that Respondent Michelle Berman committed three violations of the Political Reform Act, as follows:

COUNT 1: On or about September 4, 2006, Respondent Michelle Berman caused a contribution from George Barich to be made by Adrienne Lauby, such that the identity of the donor was not reported, in violation of Sections 84301 and 84302 of the Government Code.

COUNT 2: On or about September 4, 2006, Respondent Michelle Berman caused a contribution from George Barich to be made by Robin Birdfeather, such that the identity of the donor was not reported, in violation of Sections 84301 and 84302 of the Government Code.

COUNT 3: On or about September 4, 2006, Respondent Michelle Berman caused a contribution from George Barich to be made by Tim Foley, such that the identity of the donor was not reported, in violation of Sections 84301 and 84302 of the Government Code.

- 2) **In the Matter of Adrienne Lauby, FPPC No. 10/116.** On August 11, 2010, probable cause was found to believe that Respondent Adrienne Lauby committed one violation of the Political Reform Act, as follows:

COUNT 1: Respondent Adrienne Lauby, acting as an agent or intermediary, made a contribution on behalf of another person, such that the identity of the donor was not reported, in violation of Sections 84301 and 84302 of the Government Code.

- 3) **In the Matter of Tim Foley, FPPC No. 10/117.** On August 11, 2010, probable cause was found to believe that Respondent Tim Foley committed one violation of the Political Reform Act, as follows:

COUNT 1: Respondent Tim Foley, acting as an agent or intermediary, made a contribution on behalf of another person, such that the identity of the donor was not reported, in violation of Sections 84301 and 84302 of the Government Code.

- 4) **In the Matter of Robin Birdfeather, FPPC No. 10/505.** On August 17, 2010, probable cause was found to believe that Respondent Robin Birdfeather committed one violation of the Political Reform Act, as follows:

COUNT 1: Respondent Robin Birdfeather, acting as an agent or intermediary, made a contribution on behalf of another person, such that the identity of the donor was not reported, in violation of Sections 84301 and 84302 of the Government Code.

5) **In the Matter of Christopher Robles, FPPC No. 10/470.** On August 17, 2010, probable cause was found to believe that Respondent Christopher Robles committed one violation of the Political Reform Act, as follows:

COUNT 1: Respondent Robles failed to file a short form campaign statement, covering the reporting period of January 1, 2006 through December 31, 2006, in violation of Section 84206 of the Government Code.

6) **In the Matter of Floyd Leeson, FPPC No. 07/120.** On August 27, 2010, probable cause was found to believe that Respondent Floyd Leeson committed fourteen violations of the Political Reform Act, as follows:

COUNT 1: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 6, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03721221, in the Las Cienegas Oil Field, in violation of Government Code Section 87100.

COUNT 2: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 6, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03722983, in the Inglewood Oil Field, in violation of Government Code Section 87100.

COUNT 3: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 6, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03723389, in the Inglewood Oil Field, in violation of Government Code Section 87100.

COUNT 4: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 19, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03700300, in the Las Cienegas Oil Field, in violation of Government Code Section 87100.

COUNT 5: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 19, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a

Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03700302, in the Las Cienegas Oil Field, in violation of Government Code Section 87100.

- COUNT 6: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 19, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03720099, in the Las Cienegas Oil Field, in violation of Government Code Section 87100.
- COUNT 7: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 19, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03726447, in the Inglewood Oil Field, in violation of Government Code Section 87100.
- COUNT 8: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 28, 2005, in which he had a financial interest by processing a Notice of Intent to Drill, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03726554, in the Inglewood Oil Field, in violation of Government Code Section 87100.
- COUNT 9: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about July 28, 2005, in which he had a financial interest by processing a Notice of Intent to Drill, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03726555, in the Inglewood Oil Field, in violation of Government Code Section 87100.
- COUNT 10: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about August 9, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03700298, in the Las Cienegas Oil Field, in violation of Government Code Section 87100.
- COUNT 11: Respondent Floyd Leeson, as an associate engineer for the Department of Conservation, Division of Oil, Gas and Geothermal Resources, made a governmental decision on or about August 9, 2005, in which he had a financial interest by processing a Notice of Intent to Rework, and by subsequently issuing a Permit to Conduct Well Operations to Plains Exploration & Production Co., for API #03708702, in the Inglewood Oil Field, in violation of Government Code Section 87100.

COUNT 12: Respondent Floyd Leeson, as a designated employee of the Department of Conservation, Division of Oil, Gas and Geothermal Resources, on or about April 10, 2006, failed to disclose his investment interests in oil and gas companies in his 2005 annual statement of economic interests, in violation of Government Code Section 87206.

COUNT 13: Respondent Floyd Leeson, as a designated employee of the Department of Conservation, Division of Oil, Gas and Geothermal Resources, failed to file a 2006 annual statement of economic interests by the April 2, 2007 due date, in violation of Government Code Section 87300.

COUNT 14: Respondent Floyd Leeson, as a designated employee of the Department of Conservation, Division of Oil, Gas and Geothermal Resources, failed to file a leaving office statement of economic interests by the July 13, 2007 due date, in violation of Government Code Section 87300.

7) In the Matter of William Eisen, FPPC No. 08/729. On August 27, 2010, probable cause was found to believe that Respondent William Eisen committed three violations of the Political Reform Act, as follows:

COUNT 1: On or about October 9, 2008, Respondent Bill Eisen sent a mass mailer, with the heading "South Bay Taxpayers Association," opposing his recall from the Manhattan Beach School District board in the November 4, 2008, election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

COUNT 2: On or about October 10, 2008, Respondent Bill Eisen sent a mass mailer, with the heading "South Bay Taxpayers Association," opposing his recall from the Manhattan Beach School District board in the November 4, 2008, election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

COUNT 3: On or about October 22, 2008, Respondent Bill Eisen sent a mass mailer, with the heading "South Bay Republican Club," opposing his recall from the Manhattan Beach School District board in the November 4, 2008, election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

8) In the Matter of Beverly Seedborg and Voter Guide Slate Mail, FPPC No. 09/209. On August 27, 2010, probable cause was found to believe that Respondents Beverly Seedborg and Voter Guide Slate Mail committed four violations of the Political Reform Act, as follows:

COUNT 1: Respondents Beverly Seedborg and Voter Guide Slate Mail failed to file a slate mailer organization semi-annual statement for the reporting period ending December 31, 2006, in violation of Government Code Section 84218, subdivision (a).

COUNT 2: Respondents Beverly Seedborg and Voter Guide Slate Mail failed to file a slate mailer organization semi-annual statement for the reporting period ending December 31, 2008, in violation of Government Code Section 84218, subdivision (a).

- COUNT 3:** Respondents Beverly Seedborg and Voter Guide Slate Mail failed to file a slate mailer organization preelection statement for the reporting period ending March 17, 2006, in violation of Government Code Section 84218, subdivision (b)(1).
- COUNT 4:** Respondents Beverly Seedborg and Voter Guide Slate Mail failed to file a slate mailer organization preelection statement for the reporting period ending May 20, 2006, in violation of Government Code Section 84218, subdivision (b)(1).

F. Advice Letter Summaries from July 23 through August 17, 2010

Campaign

Oliver Luby

I-10-105

Under the Act, City and County of San Francisco Slate Mail Organizations must file with the county clerk, which for the City and County of San Francisco is the Registrar of Voters of the City and County of San Francisco and the San Francisco Department of Elections. While the Act permits a local jurisdiction to designate a different filing location or filing clerk for persons operating solely within the jurisdiction, the authority to select a different filing location or clerk rests entirely in the local jurisdiction. So long as the City and County of San Francisco instructs City and County of San Francisco Slate Mailer Organizations to file with Registrar of Voters of the City and County of San Francisco and the San Francisco Department of Elections pursuant to the Act, the Commission must defer to the City and County of San Francisco.

Lance Olson

A-10-117

Under the unique facts presented, this letter concludes that, for purposes of Section 85316 and Regulation 18421.1(c), the committee of a candidate for elective state office had constructive possession of, and therefore “received,” a contribution for the primary election prior to the election even though it did not take actual possession of the contribution until after the election.

Conflict of Interest

Ariel Pierre Calonne

I-10-095

City attorney requested advice on behalf of city councilmember who has property within the city's designated project area about the councilmember's participation in decisions regarding annexing a parcel of property into the project area. Staff advised that because the councilmember's property is over three miles from the property to be annexed and the current project is not a redevelopment project, the councilmember's economic interest in his real property does not bar him from participating in decisions related to the annexation.

Jeffrey G. Scott

A-10-120

A member of the District's Board treats the District's CEO as a medical patient. The Board Member (CEO's doctor) is paid for his medical services for the CEO by the District's PERS plan and/or the District directly, as these are benefits given the CEO by the District. The CEO's job is being evaluated by the Board, which may lead to an increase in the CEO's salary and benefits. Advised that the Doctor/Board Member would have a conflict of interest if he participated in the evaluation of the CEO.

Rommel Declines

A-10-130

Because AT&T is the employer of the planning commissioner and a source of income, the commissioner will have a conflict of interest in any decision that will have either a direct or indirect material financial effect on AT&T. Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is *directly* involved in a decision before the official's agency, is deemed material. This standard for determining materiality for a directly involved source of income is known as the “one penny” rule. If the source of income is affected by even one penny, the financial effect is deemed material.

C/I Code

Daniam Hopp

A-10-121

A state official is advised that, pursuant to his disclosure category, he will not have to disclose his private law practice as a source of income to him once the practice becomes operative. However, he will have to disclose clients who are a source of income to him if they are subject to the regulation of his agency.

Elizabeth G. Pianca**I-10-123**

- 1) Persons in positions that are no longer designated in the city's code because the duties of the position have changed must file "leaving office" statements of economic interests.
- 2) Persons in positions that are no longer designated in the city's code because they were designated in error are not required to file "leaving office" statements of economic interests.

Gifts**Gilliam Calof****I-10-107**

Organization hosts a conference. The reportable source of gifts to public officials who attend the conference for free would be the sponsors who donated money to the organization, not the organization. Thus, the value of the gift received by the official would be pro-rated among the sponsors that funded the gift. Each sponsor would be subject to the \$420 gift limit and would be reportable as a source of the gift on the official's statement of economic interests at \$50.

Danielle Navas**A-10-110**

Public official sought advice as to whether she was required to report on her Form 700 a scholarship for boarding and registration fees provided to her to attend a conference hosted by a 501(c)(3) nonprofit group. Official was advised that she must report as a gift (not subject to gift limits) on her Form 700 the portion of the scholarship that paid for her room and board to attend the educational conference. The portion of the scholarship that paid for the registration fees is not a reportable gift under the "informational material" exception, provided that the purpose of the meeting is primarily to convey information to assist the official in performance of her official duties.

Tom Pico**I-10-122**

Since a prize received by the official at a conference that was open to both private and public professionals in the field of human resource management appears to have been awarded in a bona fide competition as contemplated by Regulation 18946.5, the prize would not be considered a "gift," but rather would be treated as reportable income.

Lobbying**Tom Petersen****A-10-086**

A lobbyist employer's in-house lobbyist may lobby for an affiliated entity. The lobbyist employer must identify itself and the affiliated entity on its Form 603, and must file consolidated quarterly lobbying reports which include the lobbyist employer activity for both entities on one report.

Lance Olson**A-10-092**

A lobbying firm is advised that nothing in the Act prevent the firm from renting its property at fair market value to other entities for the purpose of holding political fundraisers.

Revolving Door**Gregory Jones****I-10-115**

Former City Manager for the City of Hayward requested clarification on the local one-year ban found in Section 87406.3. Requestor will soon be accepting employment as a commercial property sales agent. Advised that Section 87406.3 precludes requestor from interacting with staff or "others" within the City of Hayward if the interactions will be for the purpose of influencing any legislative or administrative actions, or any discretionary actions involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property. If, however, the interactions are limited to requests regarding information concerning matters of public record, they will not be prohibited. Also, "commission-based" pay is considered "compensation" for purposes of the local one-year ban.

Doug Goto**I-10-118**

Former state employee who left his agency more than 12 months ago requested advice on the revolving door provisions of the Act should he seek contract work. Staff advised that the one-year ban applies when an employee leaves state service, whether he has leave credits to "run down" or not and does not apply in this

situation. Because the employee did not have a particular consulting job about which he wanted advice staff explained the fundamentals of the permanent ban.

Jeanne Schechter

I-10-124

A local official is advised that once she is engaged in negotiating employment with a specified prospective employer she may not participate in any decision that directly relates to the employer.